

WORKERS' COMPENSATION INDUSTRIAL COUNCIL
NOVEMBER 5, 2015

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, November 5, 2015, at 1:00 p.m., Offices of the West Virginia Insurance Commissioner, 1124 Smith Street, Room 400, Charleston, West Virginia.

Industrial Council Members Present:

Bill Dean, Chairman
Kent Hartsog, Vice-Chairman
Delegate Mick Bates
James Dissen
Dan Marshall
Delegate Steve Westfall
Sydney Thornhill-Brown

1. Call to Order

Chairman Bill Dean called the meeting to order at 1:00 p.m.

2. Approval of Minutes

Chairman Bill Dean: The minutes of the September 24, 2015 meeting were sent out. Did everyone have a chance to look them over? Is there a motion to approve?

James Dissen made the motion to approve the minutes from the September 24, 2015 meeting. The motion was seconded by Kent Hartsog and passed unanimously.

3. Office of Judges' Report – Rebecca Roush, Chief Administrative Law Judge

Judge Rebecca Roush: Good afternoon. It's a pleasure to be here today. I tendered to you yesterday evening a copy of the Office of Judges' Report that contains statistics for the month of October, as well as our year-to-date. This morning I sent them to the new members. Hopefully you received them. If not, I may need to get your updated email address.

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My name is Rebecca Roush and I am the Chief Administrative Law Judge at the Office of Judges. We do the first level of workers' compensation appeals in the State of West Virginia, and we provide this [report] to the Industrial Council as a courtesy for them to understand the litigation that is going on within our office. Usually the report looks pretty much the same, although you will see documented that there is a decline in the amount of litigation going on in workers' compensation, at least in our office. This month you'll see that we acknowledged 352 protests for a total of 3,171 that's been in our office to date for calendar year 2015. The first page is the most interesting, which concludes a breakdown of the types of protests by carrier type for litigation within our office. The bulk of our work comes from the private carrier market with almost 73% coming from that type of carrier. The Old Fund, as expected, is dwindling with approximately 10% of the protests with the remainder coming from the self-insured market at almost 18%. And you'll see that our projected totals this year are around 3,800, which is a decline from last year and previous years. For example, last year we had 4,090 protests within our office. So, there is still a trend toward declining litigation in workers' compensation. I'll be happy to take any questions you might have about this report.

Chairman Dean: Mr. Marshall, do you have any questions?

Dan Marshall: No, Mr. Chairman.

Chairman Dean: Mr. Hartsog?

Kent Hartsog: No, sir.

Chairman Dean: Mr. Dissen?

James Dissen: I do not. Thank you.

Chairman Dean: Ms. Brown?

Sydney-Thornhill Brown: No, sir.

Chairman Dean: Delegate Westfall?

Delegate Steve Westfall: No, sir.

Chairman Dean: Delegate Bates?

Delegate Bates: No.

Judge Roush: I wanted to let you know that we had two successful workshops where we presented issues that were relevant to our office and practitioners. We had Mr. Dissen with us at our Charleston workshop. I wanted to hand out the materials that we shared with our audience, although I don't think I have enough. I will bring more next time or send them in the mail to whoever doesn't get one. If you have any questions after reviewing it, I'll gladly take them.

Mr. Dissen: I just want to comment. The workshop was excellent. You kept it on schedule. You kept it moving, and it was very good.

Judge Roush: Thank you.

Delegate Mick Bates: The decline on the number of protests. . .what about the Supreme Court level? Can you give me any insight into that?

Judge Roush: I really cannot. We only track litigation statistics for our office. I would be happy to check with Mr. Vernon who handles the workers' compensation appeals for the court, and provide you with some information.

Delegate Bates: Thank you.

4. General Public Comments

Chairman Dean: We'll move onto general public comments. Does anybody from the general public have a comment they would like to make today? [No comments from the public.]

5. Old Business

Chairman Dean: Does anybody from the Industrial Council like to bring anything up under old business. Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No, sir.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Ms. Brown?

Ms. Brown: No, sir.

Chairman Dean: Delegate Westfall?

Delegate Westfall: No, sir.

Chairman Dean: Delegate Bates?

Delegate Bates: Not at this time. Thank you.

6. New Business

Chairman Dean: We'll move onto new business. Does anybody from the Industrial Council have anything to bring up under new business? Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: I would just like to ask the Commissioner and General Counsel, are there any plans to bring up anything to the Council in the next several months? Are there any rule changes or anything being contemplated?

Commissioner Michael Riley, OIC: There is not. I think the market itself is performing well, and it is well publicized. For November we had another 12% loss costs decrease approval that just went into effect. So, that's 10 or 11 straight loss cost decreases. Obviously, as Judge Roush just reported, the number of appeals continues to steadily decline. It doesn't mean that everything is perfect, but in the aggregate it certainly seems that – at least in my opinion – workers' comp market is performing well, and is not a significant issue right now. We don't have any proposed legislation that

would be dealing with workers' comp. We've got some things on the insurance end, but nothing from workers' comp.

Mr. Hartsog: Are there any particular groups that are clamoring for any specific changes per se?

Commissioner Riley: Nobody has reached out to us in that regard. Internally some of our monitoring. . . obviously we have weekly meetings on complaints from the general public and potential claimants. That number has decreased significantly also where we are actually realigning some of our resources and moving them over to the health arena out of workers' comp. I'm now aware of any significant matters or anything on the agenda.

Mr. Hartsog: Thank you very much. And that's all really good news.

Commissioner Riley: Thank you.

Chairman Dean: Mr. Dissen, do you have anything that you would like to bring up under new business?

Mr. Dissen: I do not. I think we're trending in the right direction.

Chairman Dean: Ms. Brown?

Ms. Brown: I do not. I just want to thank you for the opportunity to be here.

Chairman Dean: Delegate Westfall, do you have anything you'd like to bring up?

Delegate Westfall: I'd like to thank you for the opportunity to be here.

Chairman Dean: Delegate Bates, would you like to bring anything up?

Delegate Bates: Looking forward to working with you.

Chairman Dean: Commissioner?

Commissioner Riley: No, sir.

Chairman Dean: Mr. Pauley?

Andrew Pauley, General Counsel, OIC: No, sir.

7. Next Meeting

Chairman Dean: The next meeting is going to be scheduled. Any idea when we would need to get back together?

Mr. Pauley: As you know, Mr. Chairman, we have been meeting about every two months, and we would recommend keeping that schedule, unless the Board would like to change that. I think Margaret has some dates for you to approve, if everybody's schedule is available. [There was discussion about future meeting dates for 2016.]

Mr. Dissen: Is there a statutory requirement on meetings?

Mr. Pauley: I think it is at least once a quarter.

Mr. Hartsog: Why don't we shoot for around the 7th, 13th, or 14th?

Mr. Pauley: That's fine.

Chairman Dean: We'll schedule a meeting in January.

Mr. Pauley: Okay.

8. Executive Session

Chairman Dean: The next order of business is the Executive Session. The next item on the agenda is related to self-insured employers. These matters involve discussion as specific confidential information regarding a self-insured employer that would be exempted from disclosure under the West Virginia Freedom of Information Act pursuant to West Virginia Code §23-1-4(b). Therefore it is appropriate that the discussion take place in Executive Session under the provisions of West Virginia Code §6-9A-4. If there is any action taken regarding these specific matters for an employer this will be done upon reconvening of the public session. Is there a motion to go into Executive Session?

Mr. Marshall made the motion to go into Executive Session. The motion was seconded by Mr. Hartsog and passed unanimously.

[The Executive Session began at 1:14 p.m. and ended at 1:29 p.m.]

Chairman Dean: We are back in regular session. Is there anything else that needs to be discussed today?

After further discussion on meeting dates for 2016, the next Industrial Council meeting was scheduled for Thursday, January 14, 2016, at 1:00 p.m.

9. Adjourn

Chairman Dean: Is there a motion for adjournment?

Mr. Dissen made the motion for adjournment. The motion was seconded by Mr. Hartsog and passed unanimously.

There being no further business the meeting adjourned at 1:31 p.m.